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No. 268

The Supreme Court of the United States

OCTOBER TERM, 1942.

STERLING P. HARRIS, Administrator of the Estate of Anna L. Harris, Deceased,

Petitioner,

vs.

ZION'S SAVINGS BANK AND TRUST COMPANY,

Brief for Petitioner on the Merits

J. D. SKEEN,
E. J. SKEEN,
Counsel for Petitioner.

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Brief for Petitioner on the Merits

The opinion of the Circuit Court of Appeals in this cause is published in 127 F. (2d) 1012. (R.22). The opinion of the Supreme Court of the State of Utah, to which reference will be made, is published in 99 Utah 464; 105 P. (2d) 461. The order of this Court granting the petition for a writ of certiorari to the Supreme Court of Utah is published in 312 U. S. 670; 85 L. Ed. 1112. The order of this Court dismissing the proceeding is published in 313 U. S. 541; 85 L. Ed.

1509; 61 S. Ct. 840. No opinion was delivered by the District Court of the United States for the District of Utah.

The grounds upon which the jurisdiction of this Court is invoked are:

1. That the district court in dismissing the said proceeding and the Circuit Court of Appeals for the Tenth Circuit in affirming the judgment of dismissal, have disregarded the supremacy of the Constitution and Laws of the United States.

2. That by construction of General Order 50-9, in bankruptcy, the Circuit Court of Appeals has added a substantive provision to section 75 (r) of the Bankruptcy Act, and through such construction, petitioner has been denied rights conferred by Federal Statutes.

3. A conflict exists in the decisions of various Circuit Courts of Appeal as to the construction and application of Section 75 (r) of the Bankruptcy Act.

The jurisdiction of this Court is given by Section 240 of the Judicial Code, 38 USCA, Section 347, and by Section 24 C of the Bankruptcy Act.

STATEMENT

On the 20th day of December, 1937, Anna L. Harris filed a petition in the United States District Court for the District of Utah praying for relief under Section 75 of the Bankruptcy Act. The said petition recited that she was a farmer within the purview of the Act and there was attached thereto schedules A and B showing liabilities of $8,430.00 and assets of an estimated value of $32,500.00. Said matter was referred to the conciliation comissioner for Salt Lake County, who called and held a meeting of creditors. The debtor made an offer of composition and extension on the 21st day of February, 1938. She died on the 23rd day of November, 1938 and on March 30, 1939 let-

ters of administration of the estate of the deceased debtor issued to Sterling P. Harris, the surviving husband, who is the petitioner herein.

On February 15, 1940 the administrator filed his petition in the District Court of the United States for the District of Utah, praying for an order reviving the proceedings under Section 75 of the Act. Attached to the petition was an order of the probate court authorizing the administrator to petition for the revival of the proceedings pending at the time of the death of Anna L. Harris or to institute new proceedings in the United States District Court as advised. On February 15, 1940, the District Court entered an order of revival. Zions Savings Bank and Trust Company appealed from the order of the probate court to the Supreme Court of the State of Utah and served notice that it had given bond to stay the proceedings. On the 13th day of September, 1940, the Supreme Court of Utah reversed the District Court and set aside its order authorizing the administrator to revive the Federal Court proceeding. The opinion of the Supreme Court of Utah is reported in

99 Utah 464; 105 P. (2d) 461.

On September 18, 1940, Sterling P. Harris deposited an amended petition in the office of the Clerk of the United States District Court praying for relief under Subsection (s) of Section 75 of the Bankruptcy Act. The petition was endorsed by the clerk as received on that date.

The administrator applied to this Court for a writ of certiorari to the Supreme Court of Utah. The writ was granted.

312 U. S. 670; 85 L. Ed. 1112.

And after argument was dismissed:

313 U. S. 541; 85 L. Ed. 1509.

During the pendency of the appeal from the order of the probate court to the Supreme Court of Utah and the proceedings in this Court, all proceedings in the District Court

of the United States were held in abeyance. On the 29th day of August, 1941, Zion's Savings Bank and Trust Company filed a motion to strike the petition for the revival of the proceedings filed by the administrator and to dismiss the proceeding upon the following grounds, towit:

> (1) "That each of said petitions were filed without any order or authorization in that behalf of the State probate court, the District Court of Salt Lake County, Utah, which appointed said administrator and wherein the estate of said deceased was and is pending and (2) that said administrator is and at all times was without right, power or authority (R. 11) under the laws of the State of Utah to file said petition or otherwise enter into bankruptcy, and said petitions and each of them were and are wholly void."

A hearing of said matter was had and the District Court made findings of fact, reciting the proceedings as hereinabove set out, from which it drew the following conclusions:

> "1. That being without any order or authority of the State probate court so to do, said administrator was without right or authority to petition this Court to reinstate and continue these proceedings under said Section 75 or to petition this Court (R. 16) for relief under Subsection "S" thereof. That by the State law of Utah, as determined by the Supreme Court of said State, in the matter of said Anna L. Harris, deceased, as aforesaid, the administrator is without power to petition and the probate court is without power or jurisdiction to authorize him to petition this Court for relief, and this Court was without power or jurisdiction to accept or receive his petition.
>
> 2. That therefore the order of this Court given and made herein February 15, 1940, ordering these

proceedings to be continued by said administrator should be vacated, annulled and set aside and held for naught, and the petition of said administrator theretofore filed herein February 13th, 1940 praying to revive these proceedings under said Section 75 should be dismissed.

3. That the amended petition of said administrator praying that the estate of said deceased be adjudged bankrupt and for other relief, pursuant to subsection "s" of said Section 75, which petition was presented to the clerk of this Court by said administrator September 18, 1940, but not filed, was properly refused for filing and should not be received or filed herein.

4. That said amended motion of Zion's Savings Bank and Trust Company to strike the petition of said administrator praying to revive and reinstate these proceedings under said Section 75 and to strike the amended petition of said administrator aforesaid and to dismiss these proceedings, should be denied.

Let the order of the Court be made and entered accordingly.

Dated at Salt Lake City, Utah, this 30th day of September, 1941.

TILLMAN D. JOHNSON, Judge."

On October 23, 1941 an appeal was taken from the District Court to the United States Circuit Court of Appeals for the Tenth Circuit. (R. 22). The record was completed, the case orally argued and on may 5th. 1942 the Circuit Court of Appeals filed its opinion and decision affirming the judgment of the District Court. The opinion is published in 127 F. (2d) 1012. (R. 22).

SPECIFICATION OF ASSIGNED ERRORS

1. The Circuit Court of Appeals erred in holding that Section 75 (r) does not make the administrator of the deceased farmer a farmer within the purview of that Act, and further, in holding that an administrator, even though appointed by authority of State statutes, is not authorized by the Federal statute to apply for the relief granted by Section 75 of the Bankruptcy Act to estates of deceased farmers.

2. The Circuit Court of Appeals erred in holding that Section 8 of the General Bankruptcy Law, 11 USCA, Section 26, does not apply to proceedings instituted under Section 75 of the Bankruptcy Act and that such proceedings pending at the death of the debtor may not be continued by an administrator.

3. The Circuit Court of Appeals erred in construing General Order 50-9 as adding a substantive provision to the statute, and by such construction, denying petitioner his rights under a United States statute.

The Circuit Court of Appeals erred in holding:

> "That the Supreme Court has construed subsection (r) to mean that a personal representative of a deceased may come in and seek to effect a composition or extension of the debts of the deceased under the provisions of Section 75 when such power resides in him by virtue of the State law, and files with his petition an order of the Probate Court authorizing him to proceed." (R. 25)

and concluding that in the absence of such a State law and such an order a personal representative may not proceed under said statute.

ARGUMENT

It will aid the Court in approaching these questions to collate the statutes, the General Order and the decisions of the courts to which these questions have been presented.

Section 75 of the Bankruptcy Act:

> "(r) For the purpose of this Section and Section 4 (b) the term "farmer" includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also, any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or the producton of poultry products, or livestock or livestock products in their unmanufactured state or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

The term "farmer" is used in Section 75 (a), (b), (c), (d), (e), (f), (i), (j), (k), (l) and (n) which provides:

> "(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to clerk of the court, praying for relief under Section 75 of this Act, as amended, shall immediately subject the farmer and all of his property wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed

or conditional sales contracts, the right or the equity of redemption where the period of redemption has not, or had not, expired, or where deed of trust has been given as security, or where the sale has not, or had not been confirmed or where the deed had not been delivered at the time of filing petition."

". . . In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court.

Subsection (o) specifically stays all of the proceedings against the farmer.

This term has been carried on through subsection (s).

Section 53 of the Bankruptcy Law reads:

"Rules, forms and orders. All necessary rules, forms and orders as to procedure and for carrying the provisions of this title into force and effect shall be prescribed and may be amended from time to time, by the Supreme Court of the United States. (July 1, 1898, c. 541, Sec. 30, 30 Stat. 554)."

Section 75 (b) reads:

". . . The Supreme Court is authorized to make such general orders as it may find necessary prop-

erly to govern the administration of the office of the conciliation commissioner and proceedings under this section; but any district court of the United States may, for good cause shown and in the interests of justice, permit any such general order to be waived."

General Order 50-9 reads:

"The personal representative of a deceased farmer who desires in his representative capacity to effect, under Section 75 a composition or extension of the debts of the estate, shall attach to his petition, in lieu of schedules, the following papers, certified as correct by the court which appointed him (hereinafter referred to as the probate court): (a) a copy of the order of his appointment, (b) a copy of an order of the probate court authorizing him to file the petition, etc."

The Supreme Court of Utah, in deciding that a probate court had no power to grant an administrator authority to apply to the Federal District Court for relief under Section 75 of the Act said:

"The question here is not whether the Frazier-Lemke Act permits the administrator of a deceased farmer to file a petition for debtor's relief under the moratorium provisions of the Act, but whether the probate court has the authority to authorize an administrator to file such a petition in the United States District Court in the abated bankruptcy proceeding. (R. 9).

An administrator desiring to seek the benefit of the Frazier-Lemke Act is required under the provisions of the Act to first obtain the authority of the Probate Court which (fol. 9) appointed him and to

exhibit in his petition to the Federal Court his appointment and authorization.

The privilege conferred by the Act in event a legal authorization is made by a court having power to do so is contained in Section 9.

'(9) The personal representative of a deceased farmer who desires in his representative capacity to effect, *under Section 75, a composition* or extension of the debts of the estate, shall attach to his petition, in lieu of schedules, the following papers

. . .

'(a) a copy of the order of his appointment, (b) a copy of an order of the probate court authorizing him to file the petition.' (Italics ours). Gen'l Order 50 (9). 11 U. S. Code Ann. (Sec. 53-100), 1939 Pocket Part, p. 38.' (R. 9)."

In affirming the judgment the Circuit Court of Appeals said:

"The bankruptcy court has no authority to entertain the personal representative's petition unless he attaches the authorization of the Probate Court empowering him to proceed. Lemm v. Northern California Nat'l. Bank, 9 Cir. 93 F. (2d) 709."

. . . .

"7. Furthermore, we feel that by subsection 9 of General Order 50, the Supreme Court has construed Subsection (r) to mean that a personal representative of a deceased may come in and seek to effect a composition or extension of the debts of the deceased under the provisions of Section 75 when such power resides in him by virtue of the State law, and when he files with his petition, an order of the Probate Court authorizing him to proceed."

I.

SECTION 75 (r) CONFERS AUTHORITY UPON AN ADMINISTRATOR TO SEEK RELIEF UNDER THE STATUTE WHICH AUTHORITY MAY NOT BE DENIED BY REASON OF ANY ACT OF THE STATE.

Subsection (r) has been enacted and amended three times — March 3, 1935; May 15, 1935, and March 4, 1940, but the clause in question has remained constant.

There is no room for doubt that Congress, by the repeated use of the word and by the specific definition given in subsection (r) intended the term "farmer" to include "the personal representative of a deceased farmer." So far as we have been able to discover no court, except the Circuit Court of Appeals for the Tenth Circuit, has raised any question as to what the plain words of the statute mean. The General Order was considered in:

Lemm v. Northern California National Bank, 9th Cir. 93 F. (2d) 709

holding that the General Order must be complied with. The ability of the debtor to procure the order or the powers of the probate court were not considered. In

Hines v. Farkas, CCA 5th Circuit, 109 F. (2d) 289,

it was held that the statutes of Georgia authorized an administrator to apply to the Federal Court for relief under Section 75, and that a special administrator was a personal representative. The decisions of the district courts in

In re Buxton D. C. (Ill.), 14 Fed. Supp. 616.

In re Reynolds, District Court (Okla.), 21 Fed. Supp. 369.

were disapproved. General Order 50-9 was not discussed.

The Supreme Court of Utah based its opinion squarely upon the proposition that inasmuch as the State statutes did not authorize an administrator to make such an appli-

cation to the Federal Court that therefore the order of the probate court was void. That

> "The privilege conferred by the Act in event a legal authorization is made by a court having power to do so is contained in Section 9 (referring to General Order 50-9)."

Thus the court confused the statute with the general order.

The Circuit Court of Appeals doubted that subsection (r) was broad enough to include the personal representation of a deceased farmer, but based the judgment upon the failure to comply with General Order 50, saying this Court had so construed the subsection in adopting General Order 50.

The court, as the record now stands, is confronted with the question as to whether a State court, by construction of State statutes, or the State by failure to enact any statute whatsoever, may withhold from the personal representative of a deceased farmer the right to apply for relief under Section 75 of the Act. There are no conditions or reservations in the statute which the representative of a deceased farmer need comply with. The Constitution having conferred upon Congress the power to enact uniform laws on the subject of bankruptcy throughout the United States and the statute having repeatedly been sustained as a proper exercise of that power, it would appear to follow, without question, that the right cannot be taken away by a State.

Clearly a State statute providing that no personal representative of a deceased person shall have power to apply to the Federal Court for relief under Section 75 of the Bankruptcy Act would be void because it would be in direct conflict with the supreme law of the land. Can the same thing be accomplished by indirection by a State court holding that a general administrator appointed by the State has no such power? The State Court in a proper proceeding, having appointed an administrator, he looks to the Federal statute for authority to apply to the Federal Court for relief under the Federal statute. No State

court, so far as we are advised, except the Utah court, has held that the general probate statutes making it the duty of an administrator to gather and conserve the estate of a deceased person are not broad enough to authorize the institution of the proceedings in the federal court. In that respect Utah stands alone.

II.

THE DEATH OF THE DEBTOR DID NOT TERMINATE THE JURISDICTION OF THE FEDERAL COURT OVER HER ESTATE—IT WAS CONTINUED BY SECTION 75 (n) AND BY SECTION 8 OF THE BANKRUPTCY ACT.

Section 75 of the Act makes no reference to a pending proceeding under the Act. Attention has been called to subsection (n) providing that proceedings under this section, except as otherwise provided, shall be the same as if a voluntary petition of adjudication had been filed and a decree of adjudication entered.

We find, therefore, that by the very terms of the statute, section 8 of the general bankruptcy law is adopted by section 75, and if applied, it solves the question; for

Section 8 is:

> "That the death or insanity of a bankrupt shall not abate the proceedings but the same shall be conducted and concluded in the same manner so far as possible as though he had not died or become insane."

But it is said that the express reference to the bankruptcy statute by subsection (n) should be disregarded because the purposes of the general bankruptcy law and the purposes of section 75 are different. Is that true?

The general bankruptcy law originally was intended to relieve honest debtors of their debts through their dis-

charge, and thereby to permit them to rehabilitate themselves. Secured creditors were not materially affected by the Act. Section 75 deals with secured creditors, and the property of the debtors, even though subject to liens and encumbrances to the extent that the creditor is safeguarded up to the value of his security; but he is not permitted ruthlessly to liquidate the securities consisting of the farmer's home, thereby to destroy any equity that the farmer may have in his property; and he is not permitted to recover in the event of a sale, more than the actual value of his securities.

Ultimately, however, the farmer is to be relieved of his indebtedness for it is specifically provided by subsection (s-3) that the farmer may apply for his discharge. In so far as the administration of the estate is involved, there is no essential difference between the proceedings under the general statute and the proceedings under section 75:

Even though an administrator is appointed by the State court, he immediately becomes subject to the jurisdiction of the federal court. After all, it is the property of the deceased's estate, but until the control is relinquished by the bankruptcy court the administrator may not take possession. That is exactly what should be done after administration of the estate of the deceased farmer has proceeded under section 75. The distinction between the two Acts is wholly immaterial, for the purpose is to rehabilitate the debtor by leaving with him his mortgaged farm property either through a negotiated settlement or by redemption at the appraised value. But if the property is not saved, then an order discharging the debtor may be made and the farmer may make a fresh start in his farming operations. There is nothing in the Act which justifies the disregarding of the plain provisions of section 8, which, by express terms, is adopted by subsection (n) of section 75; for under both statutes the bankruptcy court deals with the property.

III.

THE RIGHT OF THE PERSONAL REPRESENTATIVE OF A DECEASED FARMER TO APPLY FOR RELIEF UNDER SECTION 75 OF THE ACT IS NOT RESTRICTED OR LIMITED BY GENERAL ORDER 50-9.

Section 53 of the General Bankruptcy Act and Section 75 (b) pertain to the administrative features of the Act. They have no bearing upon the substantive law, hence, general order 50-9 must be construed in connection with the Act to mean that the papers therein specified must accompany the petition for relief under section 75 only if they are available. A copy of the order appointing the administrator would, of course, be available and that pertains to the orderly administration because the administrator, in order to institute the proceeding must show that he is, in fact, the administrator of he estate of the deceased farmer.

A copy of the order of the probate court authorizing him to file the petition would no doubt be available in all of the States in the United States except Utah.

Is, then, the right to be denied because such a paper is required by the General Order? If so, the General Order goes beyond the statute, and by its application, a substantive right is denied. So construed, the General Order is in conflict with the statute, and it must be disregarded in so far as the requirement of the specific order is involved. This is the view heretofore taken by this Court.

In George M. West Co. v. Lea Bros. & Co., 174 U.S. 590; 43 L.Ed. 1098, the Court said:

> "This reasoning also answers the argument based on the fact that the rules in bankruptcy promulgated by this Court provide in general terms for

an allegation of insolvency in the petition and a denial of such allegation in the answer. These rules were but intended to execute the Act, and not to add to its provisions by making that which the statute treats in some cases as immaterial a material fact in every case. Therefore, though the rules and forms in bankruptcy provide for an issue as to solvency in cases of involuntary bankruptcy, where by the statute such issue becomes irrelevant, because the particular act relied on, in a given case, conclusively imports a right to the adjudication in bankruptcy if the act be established, the allegation of insolvency in the petition becomes superfluous, or if made, need not be traversed."

And in

Meek v. Centre County Banking Co., 268 U.S., 426; 69 L.Ed. 1028, the Court said:

"The authority conferred upon this Court by Sec. 30 of the Bankruptcy Act to prescribe all necessary rules, forms, and orders as to procedure, and for carrying the Act into effect, is plainly limited to provisions for the execution of the Act itself, and does not authorize additions to its substantive provisions."

No question of the constitutionality of the General Order is involved. The question is simply; Does General Order 50-9 go beyond the authority of the court, construed as it has been, by the Supreme Court of Utah, and by the Circuit Court of Appeals?

So far as known by this writer, the Supreme Court has not construed General Order 50, and certainly the adoption of the General Order cannot be interpreted as meaning, in the face of the statute, that a personal represen-

tative of a deceased farmer is not a farmer, or if a farmer, that he may not, in Utah, file a petition for relief under section 75 of the Act in accordance with its plain provisions. If he cannot it is not because of any federal statute, but solely because the State Supreme Court has said that a federal statute may not be enforced within the boundaries of the State of Utah. Thus the State denies that the constitution and laws of the United States are the supreme law of the land.

It is idle to argue that by giving full force and effect to the federal statute, conflicts may arise between the State and federal courts. That argument may as well be made with respect to section 8 of the general bankruptcy law as to numerous other statutes through which jurisdiction is taken from the State courts and placed in the federal courts. Similar questions arose in the administration of the general bankruptcy law, where State court receivers were involved.

Both the Supreme Court of the State of Utah and the Circuit Court of Appeals have erred in this case in proceeding upon the assumption that jurisdiction of the federal court over the property of the deceased automatically terminated at her death, and that by the institution of the probate proceedings, the jurisdiction over the property was acquired by the State court to the exclusion of the federal court. The administration of the estate temporarily suspended by the death and the abatement meant only that the stay awaited the appointment of a personal representative to speak for the estate in the federal court. The jurisdiction was not and could not have been finally terminated. It was during the time of the suspension of

the administration that it is claimed the exclusive jurisdiction of the State court attached. It was always subordinate to that of the federal court.

It is submitted that the judgments of the Circuit Court of Appeals and the District Court should be set aside, with directions that the Federal Court proceed with the administration of the estate under the provisions of Section 75 of the Act.

Respectfully,

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A copy of the foregoing Brief for Petitioner on the merits received this 20th day of November, 1942.

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